



February 7, 2001

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 13084, Capitol Station
Austin, Texas 78711

OR2001-0482

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 143972.

The Texas Department of Criminal Justice ("TDCJ") received two requests for information relating to medical care provided to inmates of TDCJ. The first request is for compliance, quality-assurance, or operational review audits of unit medical operations from January, 1999 to the date of the request and supporting or follow-up documents detailing corrective actions or other responses to such audits or reviews. The second request is for an electronic copy of a complaints database, encompassing the period from January, 1998 to the date of the request and a copy of the records layout for the database. You indicate that TDCJ will release some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.107, and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the representative sample of information you submitted.¹

Initially, we note that the records in question contain information that is subject to required public disclosure under section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

¹This letter ruling assumes that the representative samples of information which you submitted are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes TDCJ to withhold any information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]

Gov't Code § 552.022(a)(1) (emphasis added). In this instance, TDCJ claims that both the information relating to compliance, quality-assurance, and operational review audits and the records relating to inmate complaints are confidential under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception thus encompasses information that is made confidential by other statutes. Subchapter D of chapter 161 of the Health and Safety Code governs medical committees and medical peer review committees. Section 161.031(a) provides in relevant part that "[i]n this subchapter, 'medical committee' includes any committee, including a joint committee, of . . . (2) a medical organization[.]" Health & Safety Code § 161.031(a)(2). Section 161.031 further provides that "[t]he term [medical committee] includes a committee . . . established under state or federal law[.] *Id.* § 161.031(b). Section 161.032 of the Health and Safety Code provides in relevant part:

- (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena. . . . Records, information, or reports of a medical committee . . . are not subject to disclosure under Chapter 552, Government Code.

Health & Safety Code § 161.032(a); *see also Jordan v. Court of Appeals*, 701 S.W.2d 644 (Tex. 1985) (construing statutory predecessor).

In this instance, you point out that subchapter E of chapter 501 of the Government Code governs "[t]he provision of medical care to TDCJ inmates." Subchapter E, as enacted by the Seventy-sixth Legislature, directs the Correctional Managed Health Care Committee (the "CMHCC") to "develop a managed health care plan for all persons confined by [TDCJ]." Gov't Code § 501.146(a).² You explain that CMHCC

prepares plans for the provision of care to inmates and then, on behalf of TDCJ enters into contracts with providers . . . which then deliver direct care to patients through their employees or subcontractors. TDCJ *per se* delivers no direct care, but is the customer and in that position plays program management, monitoring, and patient liaison roles. Medical services are thus provided by a constellation of independent and interrelated entities[.]

(Emphasis in original.) With further regard to TDCJ's roles in the provision of medical services, you assert that under subchapter D of chapter 161 of the Health and Safety Code, "medical organizations may form committees for internal review and evaluation of

²*See also* Act of May 29, 1999, 76th Leg., R.S., ch. 1190, § 1, 1999 Tex. Gen. Laws 4168, 4168-4174.

operations.” You contend that “[t]he TDCJ Health Services Division is a medical organization, or at the very least a part of a medical organization that provides medical services to TDCJ inmates.” We have carefully considered your arguments. We conclude, however, that you have not demonstrated that the submitted records qualify as confidential records, information, or reports of a medical committee under section 161.032 of the Health and Safety Code.

You also claim that the submitted records contain information relating to TDCJ inmates that is excepted from disclosure under section 552.131 of the Government Code. Section 552.131 relates to inmates of the department and provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov’t Code § 552.131(a). Section 552.029 of the Government Code provides in relevant part that, “[n]otwithstanding . . . Section 552.131,” eight specified categories of “information about an inmate who is confined in a facility operated by or under a contract with [TDCJ are] subject to required disclosure[.]” Gov’t Code § 552.029. Thus, the legislature explicitly made section 552.131 subject to section 552.029. In this instance, you assert that the records pertaining to compliance, quality-assurance, or operational review audits contain information about individual inmates. You also assert that “[a] log of complaints about the medical situations of inmates is of necessity information about inmates.” You further contend that none of the information in question is subject to required disclosure under section 552.029. We agree that portions of the information relating to the audits, which we have marked, and all of the records relating to inmate complaints are excepted from disclosure under section 552.131.

We also note that the records relating to the audits contain information that is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(3) excepts from disclosure the home address, home telephone number, or social security number of an employee of TDCJ, or information that reveals whether a TDCJ employee has family members, regardless of whether the employee complies with section 552.024 of the Government Code. You must withhold any responsive information relating to a TDCJ employee that is excepted from disclosure under section 552.117(3).

Lastly, we further note that a social security number may be excepted from disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted information is confidential under section 405(c)(2)(C)(viii)(I) of the federal

law. You have cited no law enacted on or after October 1, 1990, that authorizes TDCJ to obtain or maintain a social security number. Therefore, we have no basis for concluding that any social security number in the submitted information was obtained or is maintained pursuant to such a statute and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352. Therefore, prior to releasing any social security number, TDCJ should ensure that the number was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the submitted information is not confidential under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. However, the records relating to inmate complaints are excepted from disclosure under section 552.131 of the Government Code, and the records relating to audits contain information that is excepted from disclosure under sections 552.131 and 552.117(3) of the Government Code. The submitted records also contain social security numbers that may be confidential under section 552.101 in conjunction with federal law. The remaining information must be released to the requestor. As we are able to make these determinations, we need not address your arguments under section 552.107.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

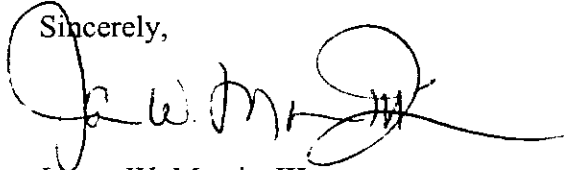
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a large, stylized flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 143972

Encl: Submitted documents

cc: Mr. Mike Ward
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)